Supreme Court, U.S.
FILED
DEC 8 1998
CLERK

(20)

No. 98-97

In The

**Supreme Court of the United States**

October Term, 1998

ELOISE ANDERSON, Director, California Department of Social Services; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; PETE WILSON, Governor of the State of California; and CRAIG L. BROWN, Director, California Department of Finance,

*Petitioners,*

v.

BRENDA ROE and ANNA DOE, on behalf of themselves and all others similarly situated,

*Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

# BRIEF OF SOCIAL SCIENTISTS AS *AMICI CURIAE* SUPPORTING RESPONDENTS

LAWRENCE S. LUSTBERG
*Counsel of Record*
Lori Outzs Borgen
GIBBONS, DEL DEO, DOLAN, GRIFFINGER & VECCHIONE
One Riverfront Plaza
Newark, New Jersey 07102
(973) 596-4500

BEST AVAILABLE COPY

32 pp

## TABLE OF CONTENTS


**Page**

TABLE OF AUTHORITIES ..... iii

INTEREST OF *AMICI CURIAE* ..... 1

STATEMENT OF THE CASE ..... 1

SUMMARY OF ARGUMENT ..... 3

ARGUMENT ..... 5

I. MOST ADULT WELFARE RECIPIENTS ARE LINKED TO THE LABOR MARKET AND WOULD NOT BE MOTIVATED TO MOVE BY A HIGHER WELFARE BENEFIT LEVEL. ..... 5

A. Most Welfare Recipients Cycle On and Off Assistance for Short Periods to Assist With Discrete Emergencies and This Cycle is Not Compatible with the Welfare Magnet Thesis ..... 5

B. Adults in the Welfare Population Are Motivated to Move to Find Work or Support From Family and Friends ..... 8

II. THE THEORY OF WELFARE MIGRATION BASED ON HIGHER BENEFITS IS A MYTH ..... 10

III. BENEFIT LEVELS DO NOT CREATE AN INCENTIVE TO MIGRATE WHEN COST-OF-LIVING VARIABLES ARE CONSIDERED..... 14

CONCLUSION ..... 19

APPENDIX ..... 21



## TABLE OF AUTHORITIES

**Page(s)**

**Cases**

*Attorney General v. Soto-Lopez*,
476 U.S. 898 (1986) ..... 4

*Green v. Anderson*,
811 F. Supp. 516, n. 14 (E.D. Cal. 1993), *aff'd*, 26 F.3d 95 (9th Cir. 1994), *cert. granted*, 513 U.S. 922 (1994), *and vacated as unripe*, 513 U.S. 557 (1995) ..... 2

*Mathews v. Lucas*,
427 U.S. 495 (1976) ..... 4

*Roe v. Anderson*,
966 F. Supp. 977 (E.D. Cal. 1997), *aff'd*, 134 F.3d 1400 (9th Cir. 1998), *cert. granted*, 119 S.Ct. 31 (1998) ..... 3, 10, 13, 19

*Shapiro v. Thompson*
394 U.S. 618 (1969) ..... 4

**Statutes**

42 U.S.C. § 604(c) (Supp. II 1996) ..... 2

*Cal. Wel. & Inst. Code* § 11450.03 ..... 3

*Cal. Wel. & Inst. Code* § 11450.03(a) ..... 2

Personal Responsibility and Work Opportunity Reconciliation Act of 1996,
42 U.S.C. §§ 601 *et seq.* (Supp. II 1996) ..... 1

**Other Authorities**


Dietrich, Sharon *et al.*,
*Work Reform: The Other Side of Welfare Reform*,
9 Stan. L. & Pol'y Rev. 53 (1998)..... 7

Edin, Kathryn & Christopher Jencks,
*Reforming Welfare*, in Christopher Jencks, *Rethinking Social Policy* 204-235 (1992)..... 6

Edin, Kathryn & Laura Lein,
*Making Ends Meet: How Single Mothers Survive Welfare and Low-Wage Work* (1997)..... 6, 7, 9, 17

*Fair Market Rents for the Section 8 Housing Assistance Payments Program -- Fiscal Year 1996*, 61 *Fed. Reg.* 6,690 (1996) (*codified at* 24 C.F.R. pt. 888 (1996)) ..... 16

*Fair Market Rents for the Section 8 Housing Assistance Payments Program -- Fiscal Year* 1999, 63 Fed. *Reg.* 52,858 (1998) (*to be codified* at 24 C.F.R. pt. 888) ..... 15

Greenberg, Mark, *Beyond Stereotypes: What State AFDC Studies on Length of Stay Tell Us About Welfare as a "Way of Life"* (1993) ..... 6

Gresenz, Carole Roan,
*An Empirical Investigation of the Role of AFDC Benefits in Location Choice* (Labor and Populations Working Paper Series No. 97-05, 1997) ..... 8

Handler, Joel F. & Yeheskel Hasenfeld,
*We the Poor People* (1997) ..... 5, 6, 7

Hanson, Russell L. & John T. Hartman,
*Do Welfare Magnets Attract* (Institute for Research on Poverty Disc. Paper No. 1028-94, 1994)..... 13





Harris, Kathleen,
*Work and Welfare Among Single Mothers in Poverty*,
99 Am. J. Soc. 317 (1993)..... 6

Johnson, Hans P. & Richard Lovelady,
*Migration Between California and Other States: 1985-1994* (Cal. Research Bureau of Cal. State Library and Demographic Unit of Cal. Dep't of Finance, 1995)..... 8

Levine, Philip & David Zimmerman,
*An Empirical Analysis of the Welfare Magnet Debate Using the NLSY* (Institute for Research on Poverty Disc. Paper No. 1098-96, 1996)..... 12

Malin, Martin,
*Unemployment Compensation in a Time of Increasing Work-Family Conflicts*,
29 U. Mich. J. L. Ref. 131 (Fall 1995 & Winter 1996)..... 7

Peterson, Paul E. & Mark C. Rom,
*Welfare Magnets: A New Case for a National Standard* (1990)..... 13, 17

Schram, Sanford & Joe Soss,
*The Real Value of Welfare: Why Poor Families Do Not Migrate*, Pol. & Soc'y, at 18 (forthcoming March 1999) (manuscript on file with authors) ..... passim

Schram, Sanford *et al.*,
*Without Cause or Effect: Reconsidering Welfare Migration as a Policy Problem*, 42 Am. J. Pol. Sci. 210 (1998) ..... passim

Stack, Carol,
*Call to Home: African-Americans Reclaim the Rural South* (1996) ..... 8

U.S. Dep't of Health and Human Services,
*Aid to Families with Dependent Children, Characteristics and Financial Circumstances of AFDC Recipients* (1995) ..... 2, 15

Urban Institute,
*One Year After Welfare Reform: A Description of State Temporary Assistance for Needy Families (TANF) Decisions as of October 1997*, (1998) ..... 16

Voss, Paul, *et al.*,
*Interstate Migration and Public Welfare: The Migration Decision Making of a Low Income Population*, in *Community, Society and Migration* (P.C. Jobes *et al.* eds., 1993) ..... 8

Walker, James R.,
*Migration Among Low-Income Households: Helping the Witch Doctors Reach Consensus* (Institute for Research on Poverty Disc. Paper No. 1031-94, 1994) ..... 13

White, Lucie E.,
*No Exit: Rethinking "Welfare Dependency" From a Different Ground*, 81 Geo. L. J. 1961 (1993) ..... 5

**Rules**

Supreme Court Rule 37.3 ..... 1

Supreme Court Rule 37.6 ..... 1

**Legislative Materials**

H.R. Doc. No. 105-7 (1998), *1998 Green Book: Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means* .. 4, 6, 7



H.R. Rep. 104-14 (1996), *1996 Green Book: Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means* ..... 16

H.R. Rep. No. 104-651, at 1337 (1996), *reprinted in* 1996 U.S.C.C.A.N. 2183 ..... 2

## INTEREST OF *AMICI CURIAE*[1]

*Amici* are social scientists and other scholars in the fields of law, economics, history, social work, women's studies, and public policy. They are professors and researchers at leading institutions throughout the United States. They have researched, written, and taught in all areas of poverty studies, and have specialized in social welfare policy. In particular, many of the *amici* have studied the changes to the welfare system initiated by passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. §§ 601 *et seq.* (Supp. II 1996), and have evaluated the empirical support -- or lack thereof -- for these changes. Because of this expertise, *amici* here provide the Court with their understanding of the issues raised in this case. A complete list of *amici* is set forth in the Appendix.

## STATEMENT OF THE CASE

In 1992, California amended its welfare regulations to limit the amount of benefits that a new resident in the state could receive during her first twelve months of residency. Specifically, the law limited a family's benefits during the first twelve months of residency to an amount not to exceed "the maximum aid payment that would have been received by that family from the state of prior residence." *Cal. Wel. &*

---

[1] All parties have consented to the appearance of the social scientists in this matter, and letters of consent have been lodged with the Clerk of the Court pursuant to Rule 37.3. Pursuant to Rule 37.6, counsel for *amici* states that no counsel for any party has authored this brief in whole or in part, and no person or entity, other than *amici curiae*, or their counsel, have made a monetary contribution to the preparation or submission of this brief.

*Inst. Code* § 11450.03(a). In a decision holding that this durational residency requirement was unconstitutional, the district court reviewed the legislative history of the law and found that its purpose appeared to be "to deter migration by poor people into the State." *Green v. Anderson*, 811 F. Supp. 516, 521, n. 14 (E.D. Cal. 1993), *aff'd*, 26 F.3d 95 (9th Cir. 1994), *cert. granted*, 513 U.S. 922 (1994), *and vacated as unripe*, 513 U.S. 557 (1995). The law was not implemented due to the subsequent vacatur of the necessary federal approval.

Four years later, Congress radically altered all federally sponsored welfare programs. The old system, Aid to Families with Dependent Children ("AFDC"), was replaced with a new program, Temporary Assistance for Needy Families ("TANF"). Under the TANF structure, states are given block grants to help fund their welfare programs, which are to be developed on a state-by-state basis. The new welfare law permits a state operating a TANF program to "apply to a family the rules (including benefit amounts) of the [TANF] program . . . of another State if the family has moved to the State from the other State and has resided in the State for less than 12 months." 42 U.S.C. § 604(c) (Supp. II 1996). The legislative history indicates that this provision was enacted due to a belief that "some families move across State lines to maximize welfare benefits" and that "States that want to pay higher benefits should not be deterred from doing so by the fear that they will attract large numbers of recipients from bordering States." H.R. Rep. No. 104-651, at 1337 (1996), *reprinted in* 1996 U.S.C.C.A.N. 2183, 2396.

Given this development, in October 1996, California submitted a TANF plan to the United States Department of Health and Human Services which included such a durational residency requirement. *Roe v. Anderson*, 966 F. Supp. 977,



979 (E.D. Cal. 1997), *aff'd*, 134 F.3d 1400 (9th Cir. 1998), *cert. granted*, 119 S.Ct. 31 (1998). The plan was approved and went into effect on April 1, 1997. *Id.* at 979-80. This restriction was struck down as unconstitutional by the United States District Court and the United States Court of Appeals for the Ninth Circuit, but petitioners now ask the Court to reverse the lower courts and uphold the California statute limiting the level of welfare benefits for new state residents.

## SUMMARY OF ARGUMENT

The California durational residency statute, *Cal. Wel. & Inst. Code* § 11450.03 ("the statute"), provides that families eligible for welfare assistance who have resided in the state for less than twelve consecutive months immediately before applying for aid cannot receive assistance in an amount higher than the maximum aid that that family would have received from the state of prior residence. Under the statute, families that have lived in California for at least twelve months receive an amount that the state deems necessary for subsistence; families coming from a state with higher benefits receive the same level. Families coming from a state with lower benefits receive that lower level despite the fact that the members of these families are bona fide residents of California and are identical to similarly situated persons who have resided in California for at least twelve months.

For example, under the statute, in 1997, the monthly benefit for a family of three that resided in California for at least twelve months would have been $565; for a family of three arriving from Arizona within the prior twelve months, $347; from New Mexico, $389; Nevada, $348; Texas, $188; and Mississippi, $120. H.R. Doc. No. 105-7, Table 7-9, at

419-20 (1998), *1998 Green Book: Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means* ("*1998 Green Book*"). When one considers the cost of living in California for basic necessities for a single mother and two minor children, these reductions -- ranging from a low of 31% to a high of 78% of California's benefits-- are significant.

This durational residency restriction for receipt of welfare benefits is based on a theory of "welfare magnets" -- that welfare-eligible families move to a new state due to the enticement of higher welfare benefits, and that fewer poor people will move to a state if they are not immediately eligible for the higher level of benefits. This statute is unconstitutional because it is impermissibly intended to eliminate migration and because there is no compelling state interest in drawing a distinction in the level of welfare payments between California state residents who have lived in the state for more than twelve months and those who have lived there for less than twelve months. *Attorney General v. Soto-Lopez*, 476 U.S. 898, 911 (1986); *Shapiro v. Thompson*, 394 U.S. 618, 632-33 (1969). The statute is based upon insupportable myths, rather than "reasonable empirical judgments," which are required under even a rational basis test. *Mathews v. Lucas*, 427 U.S. 495, 510 (1976).

The stated rationale for the statute is based upon a series of assumptions which are empirically false. First, most adults who receive welfare benefits are, in fact, connected to the labor market: they receive welfare for relatively short periods to cover discrete emergencies and it is therefore unlikely that they would migrate to California in search of welfare benefits. Furthermore, the most recent empirical studies find no support for the welfare magnet thesis, and instead demonstrate that poor families that migrate are no



more likely to begin receiving welfare benefits than are poor families who have lived in the state for longer periods of time. Finally, when one takes into account the differences in costs of living, the benefit differentials between the states are not sufficiently substantial to encourage migration. For all of these reasons, the fear of creating a welfare magnet provides neither a compelling state interest nor a rational basis for providing lower welfare benefits to newer state residents than to longer-term residents.

## ARGUMENT

## I.

## MOST ADULT WELFARE RECIPIENTS ARE LINKED TO THE LABOR MARKET AND WOULD NOT BE MOTIVATED TO MOVE BY A HIGHER WELFARE BENEFIT LEVEL.

### A. Most Welfare Recipients Cycle On and Off Assistance for Short Periods to Assist With Discrete Emergencies and This Cycle is Not Compatible with the Welfare Magnet Thesis.

The prevailing myth about welfare is that recipients are primarily young black women who have lots of children, are long-term dependents, and pass this dependency from generation to generation. *See* Lucie E. White, *No Exit: Rethinking "Welfare Dependency" From a Different Ground*, 81 Geo. L. J. 1961, 1966-70 (1993). These generalizations are demonstrably false. In fact, the welfare rolls are mixed racially and the average welfare family is about the same size or smaller than is the average non-welfare family. Joel F. Handler & Yeheskel Hasenfeld, *We the Poor People* 45 (1997). In 1995, the average size of the welfare family was 2.8; 72.8% of AFDC families consisted

of one or two children, and 88.3%, of three or fewer children. *1998 Green Book*, Table 7-19, at 440.

Long-term dependency is also a myth. Contrary to the popular view of long-term dependency, the reality is of people cycling on and off welfare. Handler & Hasenfeld at 46. While long-term reliance on welfare may be suggested by an analysis that looks only at one point in time and which includes long-term recipients, most recipients stay on welfare during each episode for a relatively short time. *1998 Green Book* at 532. More than half (55.8%) of welfare episodes end within 12 months, 70% within 24 months, and almost 83% within 4 years. *Id.* at 531-32 and Table 7-52, at 534. Counting multiple spells, 30% of recipients are on welfare less than two years, 50% less than four years, and only about 15% stay on welfare continuously for five years. Mark Greenberg, *Beyond Stereotypes: What State AFDC Studies on Length of Stay Tell Us About Welfare as a "Way of Life"* (1993).

Although people leave the welfare rolls for a variety of reasons, the most significant single reason is employment. Kathleen Harris, *Work and Welfare Among Single Mothers in Poverty*, 99 Am. J. Soc. 317 (1993). In fact, most welfare recipients combine work with welfare, if for no other reason than that they cannot survive on welfare alone. Kathryn Edin & Laura Lein, *Making Ends Meet: How Single Mothers Survive Welfare and Low-Wage Work* (1997). *See also* Kathryn Edin & Christopher Jencks, *Reforming Welfare*, in Christopher Jencks, *Rethinking Social Policy* 204-235 (1992).

The principal reason why these individuals return to welfare lies in the characteristics of the low-wage labor market -- jobs disappear, wages are low, there are often no



benefits or benefits for only the employee, or there are problems with transportation, child care, and health care. Handler & Hasenfeld at 48-53. These women[2] prefer to work but have low levels of education and the positions available to them are as cashiers, nursing aids, food service personnel, janitors, maids, and machine operators. *Id.* at 49-50. The pay is low, typically minimum wage, and most families are worse off if they rely on work only. *Id. See also* Edin & Lein at 127-136. When jobs disappear or there are child care, transportation or other difficulties, these women often turn to welfare, primarily because most of these poor women are not eligible for Unemployment Insurance. *See* Sharon Dietrich *et al.*, *Work Reform: The Other Side of Welfare Reform*, 9 Stan. L. & Pol'y Rev. 53, 61-63 (1998). *See also* Martin Malin, *Unemployment Compensation in a Time of Increasing Work-Family Conflicts*, 29 U. Mich. J. L. Ref. 131 (Fall 1995 & Winter 1996). Still, despite these odds, most welfare recipients work, and eventually exit welfare permanently via a job. Handler & Hasenfeld at 51-53.

The facts about welfare recipients and their connection to the labor market are completely inconsistent with the view that welfare benefits provide a significant "incentive" for people to move to high benefit states. Rather, the evidence of recipients leaving welfare or cycling on and off welfare tends more strongly to show that welfare recipients are in fact motivated to seek work and that they treat welfare not as an incentive, but rather as a form of unemployment insurance.

---

[2] Welfare recipients are referred to as women because women with children comprise 93% of households receiving assistance. *1998 Green Book, supra. See also* Handler & Hasenfeld at 44.

## B. Adults in the Welfare Population Are Motivated to Move to Find Work or Support From Family and Friends.

Several studies show that the poor migrate primarily to be close to family or friends or for better job opportunities, and with little knowledge of welfare rules and benefits. Paul Voss *et al.*, *Interstate Migration and Public Welfare: The Migration Decision Making of a Low Income Population*, in *Community, Society and Migration* (P.C. Jobes *et al.* eds., 1993); Carol Stack, *Call to Home: African-Americans Reclaim the Rural South* (1996). One recent study of individuals' choices of location and decisions to change location did not find a significant relationship between welfare benefits and decisions to move. Carole Roan Gresenz, *An Empirical Investigation of the Role of AFDC Benefits in Location Choice* (Labor and Populations Working Paper Series No. 97-05, 1997). The study did find, however, that decisions to move or not to move were affected by labor market considerations and that individuals were less likely to move to states with higher unemployment rates. *Id.* According to a comprehensive study of domestic net migration in California from 1985 to 1994, there is a "strong association between unemployment rates and domestic migration to California" such that migration to California increases substantially when the unemployment rates in the state decline relative to unemployment rates in the nation as a whole. Hans P. Johnson & Richard Lovelady, *Migration Between California and Other States: 1985-1994* at 13 (Cal. Research Bureau of Cal. State Library and Demographic Unit of Cal. Dep't of Finance, 1995).

Poor families migrate for reasons of family, friends, and job opportunities because even in the high benefit states,



welfare recipients cannot survive on welfare alone. Benefits, including food stamps, do not provide minimally adequate subsistence and cover less than two-thirds of the average recipient family's expenses. Sanford Schram & Joe Soss, *The Real Value of Welfare: Why Poor Families Do Not Migrate*, Pol. & Soc'y, at 18 (forthcoming March 1999) (manuscript on file with authors). Recipients rely on support from relatives and friends, as well as jobs, in addition to welfare. Kathryn Edin & Laura Lein, *Making Ends Meet: How Single Mothers Survive Welfare and Low-Wage Work* (1997). Another reason that poor families do not cross state borders in search of welfare is that over the past several years, there have been great changes in state welfare eligibility rules and disqualifications which have created considerable uncertainty. A recipient family can lose benefits entirely by making the wrong decision. Poor families are more likely to choose the security of family and friends than to gamble on uncertain higher welfare benefits. Schram & Soss at 24.

In sum, the overwhelming majority of welfare mothers have small families, are connected to the labor market, use welfare to support their work efforts, and rather than making welfare a "way of life," eventually manage to leave welfare after a relatively short time. They move to new locations to find work, as well as support from friends and families, and not to find higher welfare benefits.

## II.

## THE THEORY OF WELFARE MIGRATION BASED ON HIGHER BENEFITS IS A MYTH.

Recent empirical studies disprove the welfare magnet myth. Social scientists have utilized large data pools to evaluate and compare the movement patterns of welfare-eligible and non-eligible families. They have compared these patterns to welfare benefit levels and cost-of-living variables, especially housing costs. Based on these comprehensive studies, leading scholars have concluded that there is no empirical support for the theory of welfare migration, and that past studies supporting the theory were flawed in their methodology. *See Roe v. Anderson*, 966 F. Supp. at 982 (*citing* Handler Decl. ¶ 10).

Large-scale studies show that welfare recipients are no more likely, or perhaps even less likely, to relocate to a higher benefit state than non-recipients. For example, Schram and his colleagues utilized the Public Use Micro-data Set of the 1990 United States Census for the contiguous forty-eight states and Washington, D.C., to track a large number of out-of-state movers over a five-year period. Sanford Schram *et al.*, *Without Cause or Effect: Reconsidering Welfare Migration as a Policy Problem*, 42 Am. J. Pol. Sci. 210 (1998).[3] The authors analyzed a large sample of single mothers with children under the age of 18, and concluded that about 268,000 single poor mothers

[3] This data set provides a larger representative sample for a longer period of time than any of the other major studies of welfare migration. The data set also provides information on personal, family, and household characteristics, including the receipt of public assistance. Schram *et al.* at 220.



migrated over the five-year period. This amounts to an average of about 53,000 welfare migrants per year, which is approximately 3% of all poor single mothers. *Id.* at 221. They found that the rate of movement was nearly identical for these single mothers, regardless of whether their annual income was above or below the poverty line. Thus, even though poor families were presumably more likely to be welfare recipients, these poor families were not any more likely to move than their non-poor counterparts. *Id.* at 220.

Next, the authors compared the characteristics of migrants with non-migrants. They found that migrants had slightly higher earnings and a slightly lower likelihood of receiving public assistance than non-migrants. Comparing average incomes and average benefit levels, they found that "migrants are not more likely to come from low benefit states." *Id.* at 221. As with previous studies, the authors found no relationship between benefit levels and poor single mothers who migrate: "[P]oor single mothers living in high benefit states in 1990 were no more likely to have moved in since 1985 than poor single mothers living in low benefit states." *Id.* at 222.

If poor single mothers migrate to higher benefit states, then their rate of public assistance receipt in those states should be higher than that of poor residents who have lived in the state for more than twelve months, but there is no such relationship. Regardless of benefit level, "migrants and non-migrants tend to receive assistance at about the same rate." *Id.* at 224. Schram and his colleagues conclude: "[T]he annual level of welfare migration for the 1985-90 period, and probably for other periods of recent years, is quite small . . . [and] the migration routes of poor single mothers with children are not associated with higher welfare benefits." *Id.*

at 227. Not only is welfare migration relatively infrequent, but more importantly, it is not tied to state benefit levels.

Similarly, Philip Levine and David Zimmerman analyzed annual demographic data from the National Longitudinal Study of Youth, which collected approximately 19,000 data observations on 14 to 21 year-olds each year from 1979 to 1992. Philip Levine & David Zimmerman, *An Empirical Analysis of the Welfare Magnet Debate Using the NLSY* (Institute for Research on Poverty Disc. Paper No. 1098-96, 1996). The researchers found that 3.8% of the AFDC-eligible population moved from one state to another, and only 1.8% moved from a state offering lower AFDC benefits to a state offering higher AFDC benefits. *Id.* at 21. In contrast, of the non-AFDC eligible population, 6.8% moved to a different state, 3.4% from a lower to a higher benefit state. *Id.* Thus, of the people who moved from one state to another, non-AFDC eligible people were more likely to move to higher benefit states than AFDC-eligible people, exactly the opposite of the correlation that would be predicted by a "welfare magnet" effect. Furthermore, less than half of the AFDC-eligible population that moved to a higher benefit state actually received welfare benefits within the first two years of their move. *Id.* The authors conclude that there is "little evidence that those women most likely to be candidates for AFDC move in a pattern consistent with the welfare-magnet hypothesis." *Id.* at 32.

Other scholars using large-scale data-sets on individuals, such as the County-to-County Migration Flow Files, also found no significant welfare migration. One social scientist examined the net migration of families likely to qualify for AFDC across contiguous border counties where a state offers a grant that is at least $85 higher. James R. Walker, *Migration Among Low-Income Households:*



*Helping the Witch Doctors Reach Consensus* (Institute for Research on Poverty Disc. Paper No. 1031-94, 1994). He found as much out-migration to the lower benefit border county as in-migration to the higher benefit county. *Id.* Researchers using the Current Population Survey, 1982-84, and 1986-88, also found no association between the proportion of the welfare population moving to another state and the difference in state benefits. Russell L. Hanson & John T. Hartman, *Do Welfare Magnets Attract* (Institute for Research on Poverty Disc. Paper No. 1028-94, 1994). *See also Roe v. Anderson*, 966 F. Supp. at 982 (*citing* Hartman Decl. ¶ 49).

The principal study used by states to support their reliance upon the magnet theory as an explanation of their policies is by Peterson and Rom. Paul E. Peterson & Mark C. Rom, *Welfare Magnets: A New Case for a National Standard* (1990). Among the limitations of the Peterson and Rom study is its use of aggregate state-level data that does not directly measure migration. In addition, statistical analyses performed by states that purport to document the welfare magnet myth are flawed due to their assumption that welfare recipients are focused only upon obtaining higher benefits. Sanford Schram *et al.*, *Without Cause or Effect: Reconsidering Welfare Migration as a Policy Problem*, 42 Am. J. Pol. Sci. 210, 212 (1998). Such states estimate the proportion of the poverty or welfare population that has recently arrived and then emphasize the benefit differences that might attract migrants while de-emphasizing other factors -- better schools, safer neighborhoods, adequate public services, an escape from abusive family relationships -- which might well have been the true impetus for movement by the families; they thus discount the search for better opportunities so prevalent throughout American history. *Id.* at 212. Furthermore, most state studies estimate the

percentage of welfare recipients coming from another state (usually defined as not having resided within the state for the last five years) but fail to adjust those estimates for the percentage of the general population that similarly migrates. A finding that "one-fifth of the current welfare recipients are from out-of-state really does not tell us much about welfare migration, especially if one-fifth of the general population of the state is also from out-of-state." *Id.* at 214.

Thus, recent scholarly studies refute the magnet thesis. These studies show that poor families do not, in fact, migrate across state border to avail themselves of higher welfare benefits. In sum, the welfare magnet theory is a myth and does not provide either a compelling interest or a rational basis for any state policy regarding welfare benefits.

## III.

## BENEFIT LEVELS DO NOT CREATE AN INCENTIVE TO MIGRATE WHEN COST-OF-LIVING VARIABLES ARE CONSIDERED.

The magnet theory is predicated on the notion that there are incentive effects created by the difference in benefit levels. The theory assumes, therefore, the existence of such variation between the states. However, appropriate social science analysis of the level of AFDC benefits, both in nominal terms and adjusted for the cost-of-living, in the continental forty-eight states and Washington, D.C., reveals that "there is far less variation in the real value of benefits across the states than is often assumed, perhaps not much more than state variation in the cost-of-living, suggesting that the welfare migration story may in fact be lacking a strong causal agent." *Id.* at 217. When food stamp benefits are factored in, there is even less variation between the states.



*Id.* at 219. A new state resident in California who receives lower benefits than her non-migrant counterpart due to the lower benefit level in her prior state of residence will be forced to survive on a benefit amount that does not reflect the higher cost-of-living in her new home state.

When more refined measures of costs-of-living are utilized, differences in benefit levels virtually disappear. These refined analyses focus on the relative costs of those items upon which poor families spend the majority of their limited income, such as food and housing. Such analyses are necessary in order to understand the situation faced by poor families in California, where housing costs are higher than housing costs in all but four other states and the District of Columbia. *Fair Market Rents for the Section 8 Housing Assistance Payments Program -- Fiscal Year* 1999, 63 *Fed. Reg.* 52,858 (1998) (*to be codified at* 24 C.F.R. pt. 888). Furthermore, as of 1995, only 9% of California's AFDC families received housing assistance, as compared to the national average of 22.5%. U.S. Dep't of Health and Human Services, *Aid to Families with Dependent Children, Characteristics and Financial Circumstances of AFDC Recipients* at Table 4 (1995).

California's high housing costs have a significant effect on the welfare magnet thesis. For example, in 1996, the average amount of combined monthly benefits (i.e., AFDC and food stamps) provided by the states was $682.10. Sanford Schram & Joe Soss, *The Real Value of Welfare: Why Poor Families Do Not Migrate*, Pol. & Soc'y, Table 1, at 33 (forthcoming March 1999) (manuscript on file with authors). California offered $852.00 in combined benefits that year.[4]

---

[4] These data are based on research in Schram & Soss, *The Real Value of Welfare, supra*, as applied to 1996 data for California on the level of

Thus, a recipient moving from a state offering "average" combined benefits would have received $169.90 more in California. However, the Schram and Soss analysis demonstrates that, across the nation, each additional dollar of benefits was associated with a gain of 62 cents in additional housing costs. This relationship suggests that the recipient who moved to California would have incurred additional housing costs of approximately $105.34 per month. Consequently, the average net gain from moving to California would have been only $64.56 per month, or $14.90 per week.[5]

---

welfare benefits and average housing costs. Welfare benefit information was obtained from the 1996 Green Book. H.R. Rep. 104-14 (1996), *1996 Green Book: Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means.* Housing cost information for a two-bedroom apartment in California was obtained from the Fair Market Rent estimates developed by the United States Department of Housing and Urban Development. *Fair Market Rents for the Section 8 Housing Assistance Payments Program -- Fiscal Year 1996*, 61 *Fed. Reg.* 6,690 (1996) (*codified at* 24 C.F.R. pt. 888 (1996)).

[5] More recent figures for housing costs and welfare benefits demonstrate the continuation of this trend. According to the United States Department of Housing and Urban Development, the Fair Market Rent in 1999 for a one-bedroom apartment in California will be $622, and for a two-bedroom apartment, $780, based upon averages of metropolitan fair market rents weighted by the number of renter households in each area. Given the 1998 welfare benefit for a 3-person family in 1998 of $611 (not including food stamp benefits), these housing costs alone would consume 102% or 128%, respectively, of the welfare budget. *Fair Market Rents for the Section 8. Housing Assistance Payments Program -- Fiscal Year 1999, supra.* Urban Institute, *One Year After Welfare Reform: A Description of State Temporary Assistance for Needy Families (TANF) Decisions as of October 1997*, at Table 13 (1998) (as updated by the Center of Budget and Policy Priorities).



*Amici* acknowledge that there are analyses suggesting that benefit levels might encourage migration. *See, e.g.*, Peterson & Rom, *supra*. These studies, however, are deeply flawed in that they rely on an overall cost-of-living index rather than a measure of the cost of the market goods which most directly affect welfare recipients. Schram & Soss at 25. Specifically, their approach ignores the established fact that, compared to the general population, welfare recipients use a disproportionate amount of their welfare benefits (including food stamps) to cover food and housing costs.[6] *Id.* at 24-25. For example, "[i]n 1995, more than half of all poor renter households, regardless of welfare receipt, spent over 50 percent of their income for housing," and most welfare families do not receive housing subsidies. *Id.* at 26. Looking at housing costs alone (based on Fair Market Rent estimates created by the United States Department of Housing and Urban Development), Schram and Soss found, contrary to the magnet thesis, that housing costs vary much more across states than do welfare benefits and that the incentives to move based upon welfare benefits are therefore negligible when housing costs are considered in the equation. *Id.* at 26-30. Over all, a family's net gain in benefits in 1996 based on a move to California from a state with the average amount of combined benefits would have been $64.56 per month. *See supra* note 4. Given that the average welfare family's combined budget (packaging welfare with work, support from family and friends, etc.) is approximately $1,000 per month, Edin & Lein, *supra*, this amount seems "hardly a lucrative payoff for uprooting one's family and spending the resources needed to move to a new state." Schram & Soss at 28.

---

[6] Even food stamps do not cover the full amount of food. Most families have to use part of the cash grant to cover food expenses. Schram & Soss at 25.

Social scientists have compared the maximum monthly AFDC/food stamp benefits for a family of three to rental costs of a two-bedroom apartment for Arizona, Nevada, and California to demonstrate the impact of the durational residency statute.[7] For 1996, the figures were as follows:

| | Benefits | Rental Costs |
|---|---|---|
| Arizona | $660 | $561 |
| Nevada | $661 | $618 |
| California | $852 | $855 |

Comparing 1993 figures with those from 1996, Schram found that housing costs increase faster than benefits. In 1996, the Arizona to California move would have translated into a 29.1% increase in benefits, but a 52.4% increase in housing costs. The Nevada to California move would have meant a 28.9% increase in benefits, but a 38.3% increase in housing costs. The average move from any another state to California would have lead to a 24.9% increase in benefits, but a 48.1% increase in housing costs. In other words, moving to California often means getting higher housing costs more than it means getting higher benefits. Thus, when housing costs (as well as other costs) are considered, "the alleged cause of welfare migration offers a pitifully weak incentive for recipients. From this perspective, it should hardly be surprising that the behavior alleged in the welfare migration thesis is an exceedingly rare phenomenon. Put simply, the real value of welfare for recipients does not vary all that much across the states." Schram & Soss at 29.

---

[7] *See supra* note 4.



Under the statute, new California residents will have to pay the average 48.1% extra in housing costs without the increase of 24.9% in benefits, while poor residents who have lived in California for at least twelve months will receive the higher level of benefits. New residents of the state who moved there to seek employment, to be close to family, or perhaps to escape an abusive relationship -- not for the higher welfare benefits -- will struggle to pay higher basic living costs without an appropriate level of support. These individuals will be forced to live in overcrowded and substandard housing, and will be at a disadvantage relative to other welfare recipients both in California and in their states of origin. *See Roe v. Anderson*, 966 F. Supp at 981 (*citing* Greenstein Decl. ¶¶ 28 and 29). In short, the state will be harming these women and children for allegedly migrating in search of higher benefits when there is no empirical support for that assumption.

## CONCLUSION

It is clear that most welfare recipients are linked to the labor market, and that these individuals are motivated to move to find better job opportunities or to be near family and friends, rather than to seek higher welfare benefits. Leading scholars, utilizing recent, large data pools, conclude that there is no empirical support for the welfare migration thesis. The myth of welfare migration is further debunked when social scientists calculate the cost-of-living differences for those items upon which poor families spend the majority of their income, such as housing, as the differences in state welfare benefit levels are then rendered illusory.

The welfare migration thesis taps into deep-seated anxieties. It feeds into the stereotype of welfare recipients as self-seekers abusing the system. It serves as a justification

for state politicians to lower welfare benefits and to discriminate against outsiders. When the empirical evidence is examined, however, there is not only no compelling state interest but not even a rational basis for providing lower welfare benefits to poor single mothers and their children who migrate to the state and who, for a variety of reasons, find themselves just as much in need as similarly situated longer-term residents. The California residency rule will impose a severe financial burden on such a family, without proper state justification. Poor families should not be made to suffer in this way.

For these reasons, the Court should affirm the judgment of the Court of Appeals.

Respectfully submitted,

LAWRENCE S. LUSTBERG
*Counsel of Record*
Lori Outzs Borgen
GIBBONS, DEL DEO, DOLAN,
GRIFFINGER & VECCHIONE
One Riverfront Plaza
Newark, New Jersey 07102
(973) 596-4500

DATED: December 4, 1998



## APPENDIX A

List of *Amici Curiae*[*]

Joel F. Handler
Professor of Law
UCLA School of Law

Mimi Abramovitz
Professor
Hunter College
School of Social Work

Randy Albelda
Professor of Economics
University of Massachusetts,
Boston

Evelyn Z. Brodkin
Associate Professor
University of Chicago

Michael K. Brown
Professor of Politics
University of California,
Santa Cruz

Miriam J. Cohen
Professor of History
Vassar College

Ellen Carol DuBois
Professor
UCLA

Hester Eisenstein
Professor of Sociology
Queens College and
The Graduate Center
City University of New York

Sara M. Evans
Professor of History
University of Minnesota

Irv Garfinkel
Professor of Social Work
Columbia University

Linda Gordon
Professor of History
University of Wisconsin

John Hartman
Assistant Professor of
Sociology
Columbia University

[*] Affiliations listed for identification purposes only.

Yeheskel Hasenfeld
Professor
UCLA School of
Public Policy

Julia R. Henly
Assistant Professor
University of Chicago

Michael B. Katz
Professor of History
University of Pennsylvania

Ira Katznelson
Professor of Political Science
and History
Columbia University

Gary Krueger
Associate Professor
Macalester College

Demie Kurz
Professor of Women's Studies
and Sociology
University of Pennsylvania

Sylvia A. Law
Professor of Law, Medicine
and Psychiatry
New York University
School of Law

Sonya Alice Michel
Associate Professor of History
and Women's Studies
University of Illinois at
Urbana-Champaign

Gwendolyn Mink
Professor of Politics
University of California,
Santa Cruz

Martha Minow
Professor of Law
Harvard Law School

Frank Munger
Professor of Law
SUNY Buffalo School
of Law

Alice O'Connor
Assistant Professor
Department of History
University of California,
Santa Barbara

Rosalind Petchesky
Professor of Political Science
Hunter College
City University of New York



Frances Fox Piven
Professor of Political Science
and Sociology
The Graduate School and
University Center
City University of New York

Susan M. Reverby
Professor of Women's Studies
Wellesley College

Lillian B. Rubin
Visiting Professor
Institute for the Study
of Social Change
University of California,
Berkeley

Vicki L. Ruiz
Professor of History
Arizona State University

Elizabeth M. Schneider
Professor of Law
Brooklyn Law School

Sanford F. Schram
Visiting Professor
Bryn Mawr College

Kathryn Kish Sklar
Distinguished Professor
of History
State University of New York,
Binghamton

Joe Soss
Assistant Professor of
Government
American University

Barrie Thorne
Professor of Sociology
University of California,
Berkeley

Chris Tilly
Associate Professor of
Regional Economic and
Social Development
University of Massachusetts,
Lowell

Susan Traverso
Assistant Professor of History
North Central College

Louise G. Trubek
Clinical Professor of Law
University of Wisconsin
Law School

Daniel J. Walkowitz
Director
Metropolitan Studies
New York University

Lucie White
Professor of Law
Harvard Law School

Leslie R. Wolfe
President
Center for Women
Policy Studies

Marilyn Young
Professor of History
New York University